

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:)	Chapter 11
)	
)	Case No. 08-35653-KRH
CIRCUIT CITY STORES, INC., <i>et al.</i> ,)	(Jointly Administered)
)	
Debtors.)	Re: D.I. 5213
)	

**RESPONSE OF DIGITAL INNOVATIONS, LLC ON BEHALF OF
VONWIN CAPITAL MANAGEMENT, LP TO DEBTORS' FIFTIETH
OMNIBUS OBJECTION TO CERTAIN ADMINISTRATIVE EXPENSES
AND MOTION FOR (I) AUTHORITY TO SETOFF AGAINST SUCH
EXPENSES AND (II) A WAIVER OF THE REQUIREMENT THAT THE FIRST
HEARING ON ANY RESPONSE PROCEED AS A STATUS CONFERENCE**

Digital Innovations, LLC on behalf of VonWin Capital Management, LP (“Digital Innovations”) by and through its undersigned counsel, hereby responds to the Debtors’ Fiftieth Omnibus Objection to Certain Administrative Expenses and Motion for (I) Authority to Setoff Against Such Expenses and (II) A Waiver of the Requirement that the First Hearing on any Response Proceed as a Status Conference (Docket No. 5213) (the “50th Omnibus Objection”), and in support thereof respectfully states as follows:

1. On November 10, 2008 (“Petition Date”), the above-captioned debtors and debtors-in-possession (collectively, “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

Michael D. Mueller (VSB 38216)
Augustus C. Epps, Jr. (VSB 13254)
Jennifer M. McLemore (VSB 47164)
CHRISTIAN & BARTON, LLP
909 East Main Street, Suite 1200
Richmond, Virginia 23219
Telephone: (804) 697-4100
Facsimile: (804) 697-4112

Counsel for Digital Innovations, LLC on Behalf of
VonWin Capital Management, LP

2. On June 30, 2009, Digital Innovations timely filed an administrative expense claim pursuant to Section 503(b) of the United States Bankruptcy Code, §§ 11 U.S.C., *et seq.* (the “Bankruptcy Code”) in the amount of \$102,059.64 for goods shipped to Circuit City Stores, Inc., for the post-petition period of November 26, 2008 through December 29, 2008 (“Claim No. 14251”).

3. On August 20, 2009, Digital Innovations transferred Claim No. 14251 to VonWin Capital Management, LP.

4. On September 15, 2009, VonWin Capital Management LP filed a Notice of Transfer of Claim for Claim No. 14251.

5. On October 13, 2009, the Debtors filed the 50th Omnibus Objection.

6. In the 50th Omnibus Objection the Debtors assert that pursuant to the provisions of Section 558 of the Bankruptcy Code they should be allowed to set off certain receivables against Digital Innovations’ Claim No. 14251.

7. Digital Innovations opposes the relief requested by the Debtors in the 50th Omnibus Objection. The basis for relief asserted under the Omnibus Objection is speculative, as the Debtors seek to set off pre-petition amounts allegedly due to the Debtors against administrative claim obligations. For this reason, Digital Innovations wishes to preserve its rights and the rights of its assignee VonWin Capital Management, LP to fully address the legal and factual issues briefly set forth in the 51st Omnibus Objection at such time as when the Court deems such issues ripe for review.

8. Although the 50th Omnibus Objection states that it is seeking relief pursuant to Section 558 of the Bankruptcy Code, which is not a section mentioned in Section 502(d) of the Bankruptcy Code, the Debtors are seeking similar treatment of that sought in the 51st Omnibus

Objection and other similar pending omnibus objections. The opinion of the Second Circuit in *ASM Capital, LP v. Ames Department Stores, Inc.*, 2009 U.S. App. LEXIS 20704 (2d Cir., Sept. 18, 2009) is nevertheless applicable. “[T]he Bankruptcy Code establishes a clear division between an entity in its pre- and post-petition states. Administrative expenses arise post-petition, and generally cannot be set off against pre-petition claims.” *Ames*, 2009 U.S. App. LEXIS at *24. Thus the relief the Debtors seek in the 51st Omnibus Objection is inappropriate as a matter of law.

9. Digital Innovations joins in any similar, consistent pleadings filed in response to the 50th Omnibus Objection or in response to any similar omnibus objections filed by the Debtors. Digital Innovations reasserts and realleges the arguments expressed therein.

10. Furthermore, Digital Innovations moves that any order sustaining the Debtors’ 50th Omnibus Objection as to any defaulting respondent not include conclusions of law as to the relationship between Sections 503(b) and 502(d) of the Bankruptcy Code.

WHEREFORE, Digital Innovations respectfully requests that the Court enter an order that is consistent with the foregoing concerns raised by Digital Innovations, and that grants Digital Innovations such further and additional relief as the Court may deem just and proper.

Dated: November 4, 2009

CHRISTIAN & BARTON, LLP

By: /s/ Jennifer M. McLemore
Augustus C. Epps, Jr. (VSB 13254)
Michael D. Mueller (VSB 38216)
Jennifer M. McLemore (VSB 47164)
909 East Main Street, Suite 1200
Richmond, Virginia 23219
Telephone: (804) 697-4100
Facsimile: (804) 697-4112

*Counsel for Digital Innovations, LLC on Behalf of
VonWin Capital Management, LP*

CERTIFICATE

Pursuant to the *Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9007, and Local bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Notice, Case Management and Administrative Procedures* enter on November 13, 2008 [Docket No. 130], I hereby certify that on the 4th day of November, 2009 the foregoing pleading was served upon the following parties via electronic mail or via first class mail, postage prepaid:

Skadden, Arps, Slate, Meagher & Flom, LLP
Attn: Gregg M. Galardi
Attn: Ian S. Fredericks
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636

McGuireWoods LLP
Attn: Dion W. Hayes
Attn: Douglas M. Foley
One James Center
901 E. Cary Street
Richmond, Virginia 23219

Skadden, Arps, Slate, Meagher & Flom, LLP
Attn: Chris L. Dickerson
333 West Wacker Drive
Chicago, Illinois 60606

I further certify that the original of the foregoing pleading was filed with the Court via the Clerk's CM/ECF electronic filing system on November 4, 2009.

/s/ Jennifer M. McLemore
Jennifer M. McLemore

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